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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOSEPH KOURY,	)	
	)	
Plaintiff,	)	
	)	No. 08 cv 5409 (SAS)
v.	)	
	)	<b>ECF CASE</b>
XCELLENCE, INC., d/b/a XACT,	)	
	)	
Defendant.	)	
	)	

**DEFENDANT'S NOTICE OF MOTION TO DISMISS**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Xcellence, Inc., d/b/a XACT ("Defendant"), moves the Court to dismiss Plaintiff Joseph Koury's ("Plaintiff") claims against it for failure to state a claim upon which relief can be granted. Plaintiff asserts three causes of action against Defendant; (1) a breach of contract claim for damages, (2) a claim for a declaratory judgment that Defendant breached the contract, and (3) a claim for breach of fiduciary duty allegedly owed to Plaintiff as a creditor. As explained in Defendant's Memorandum in Support of its Motion to Dismiss filed herewith, the facts alleged in the pleadings establish that Defendant complied with its contractual obligations, and Defendant did not owe Plaintiff a fiduciary duty under governing law. Therefore, Plaintiff's causes of action should be dismissed for failure to state a claim upon which relief can be granted.

Respectfully Submitted,

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